be different from that relating to cod liver oil in any other type of container.

Mr. Chelliah contends that a prescribed test is sufficiently set out in those pages of the Pharmacopoeia and can be derived from a study of those pages.

I must confess that, at the least, I am in doubt as to whether the distinction between the tests applicable to cod liver oil in capsules and to cod liver oil in other forms of container is a valid one. In any event no evidence on the point has been submitted. That being so, on the evidence available before me on the record, I am unable to say that there is no prescribed method within the meaning of section 9(2).

The analyst having failed to state that he has followed the prescribed method or that there was no prescribed method, it seems to me that one cannot quarrel with the decision of the learned Magistrate that the prosecution had failed to comply with section 9; this not seeming to be a matter in which the prosecution can avail themselves of a presumption.

The appeal must therefore be dismissed and the acquittal affirmed.

Appeal dismissed.

Solicitors: *Drew & Napier.*

Re LOW KUAN MENG

[R. Cr. J. (Ong J.) May 5, 1962]

[K.L. — Criminal Revision No. 6 of 1962]

Criminal Law and Procedure — Preliminary inquiry — Order of acquittal — Jurisdiction of Magistrate — Criminal Procedure Code (Cap. 6) Ch. XVII.

The accused was provisionally charged with attempted murder under section 307 of the Penal Code. A preliminary inquiry was directed to be held before a Magistrate, and in due course, when it was to begin, the prosecution officer informed the Magistrate that, on instructions of the Deputy Public Prosecutor the charge against the accused was withdrawn. Thereupon the Magistrate made an order that "the accused is acquitted and discharged."

Held: the order of acquittal was manifestly wrong. A preliminary inquiry is not a trial, and at its conclusion there is no delivery of judgment. In making an order of acquittal the Magistrate was pronouncing a judgment, and he was purporting to do so even in a matter which he had clearly no jurisdiction to try.

Order of Magistrate varied, and order purporting to acquit the accused struck out.

Cases referred to:—

(1) *Public Prosecutor* v. *Mary Shim* [1961] M.L.J. 314.

CRIMINAL REVISION.

Ong J.: This matter came up for revision upon a petition by the Public Prosecutor that the Magistrate, before whom a preliminary inquiry was to have been held under Chapter XVII of the Criminal Procedure Code, had no jurisdiction to make an order of acquittal.

The accused was charged provisionally with attempted murder, an offence under section 307 of the Penal Code. A preliminary enquiry was directed to be held before a Magistrate, and in due course, when it was due to begin, on January 2, 1962, the prosecuting officer informed the Magistrate that, on instructions of the Deputy Public Prosecutor the charge against the accused was withdrawn. Thereupon the learned Magistrate made an order that "the accused is acquitted and discharged".

The order of acquittal was manifestly wrong. A preliminary inquiry is not a trial, and at its conclusion there is no delivery of judgment. In making an order of acquittal the learned Magistrate was pronouncing a judgment, and he was purporting to do so even in a matter which he had clearly no jurisdiction to try. The provisions of section 140 are quite clear. "Discharge" is not synonymous with "acquittal". The recent judgment of Adams J. in *Public Prosecutor* v. *Mary Shim* (1) makes further comment by me superfluous.

The order of the learned Magistrate is accordingly varied, and the order purporting to acquit the accused is struck out.

Order accordingly.

NATHA SINGH v. SYED ABDUL RAHMAN & ANOR.

[A.C.J. (Hepworth J.) May 7, 1962]

[Penang — Civil Appeal No. 1 of 1962]

Money and Moneylending — Promissory note in the English language — Not attested in accordance with s.27, Moneylenders Ordinance, 1951.

Contract — No plea of illegality — Whether court can intervene.

A promissory note written in the English language and not attested by of the persons specified in section 27 of the Moneylenders Ordinance, 1951 (as is required if the borrower is a person not understanding the written language on the note) is legal on the face of it. It would only be illegal if the borrowers (respondents) did not understand the English language. As there was nothing to indicate that they (respondents) did not understand the English language, it could not be said that the contract *ex-facie* showed illegality. As the respondents had not filed a defence and were absent at the trial, there was no question of an admission being made or evidence being given from which the promissory note's illegality clearly appeared.

Unless a defendant raises the defence of the illegality of a contract on the pleadings then he cannot rely upon it and, except where the contract is on the face of it illegal or its illegality is brought to the notice of the court, even the court has no right to intervene.

Cases referred to:—

(1) *Lipton* v. *Powell* [1921] 2 K.B. 51, 58.

(2) *North Western Salt Co.* v. *Electrolytic Alkali Co.* [1914] A.C. 461.

CIVIL APPEAL.

Jag-Jit Singh for the appellant.

Respondents absent.